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In re Application of
Rueger et al.
Application No. 08/937,756
Filed: September 25, 1997
Attorney Docket No. 00960-504 FWCCON2

OFFICE OF PETITIONS
A/C PATENTS
ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed on June 29, 2001, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mailing date of this decision.¹ Extensions of time under 37 CFR 1.136(a) are permitted.

This application became abandoned on March 27, 2001 for failure to timely submit a proper reply to the final Office Action, mailed on September 25, 2000, which set a shortened statutory period of 3 months for reply.² On March 26, 2001, a proposed amendment accompanied by a 3-month extension of time was filed. In an Advisory Action mailed on June 6, 2001, the Examiner indicated that the March 26, 2001 proposed amendment was not entered because it did not place the application in condition for allowance. A Notice of Abandonment was mailed on June 19, 2001.

The instant petition contains a proposed amendment in reply to the September 25, 2000 final Office Action. This proposed amendment, upon review by the Examiner, was again determined to not place the application in condition for allowance and was denied entry.

A grantable petition under 37 CFR 1.137(b)³ must be accompanied by: (1) the required reply to the outstanding Office action or notice, unless previously filed;⁴ (2) the petition fee as set forth

¹ Such a renewed petition does not require a petition fee.

² Without extensions, the reply would have been due on 12/26/00 because 12/25/00 is a Federal holiday; see 37 CFR 1.7. A 3-month extension extended the reply period to 3/26/01; see infra.

³ As amended effective December 1, 1997. See Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53194-95 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 119-20 (October 21, 1997).

⁴ The required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed (emphasis added); see MPEP 711.03(c)(III)(A). (Rev. 1, Feb. 2000)

in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). A required reply to a final Office action, as is in the instant case, **must be a notice of appeal, the filing of a continuing application, a request for continued examination (RCE), or proper amendment, i.e., an amendment that *prima facie* places the application in condition for allowance.**⁵

The instant petition does not comply with 37 CFR 1.137(b)(1) in that it is not accompanied by a notice of appeal, the filing of a continuing application, an RCE, or a proper amendment. Consequently, the petition is not granted.

The Office acknowledges receipt of the \$620 petition fee (small entity).

Further correspondence with respect to this matter should be addressed as follows:

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⁵ No claims stand allowed under the 9/25/00 final Office Action. Otherwise, an amendment canceling all the rejected claims would also be a form of proper reply. See MPEP 711.03(c)(III)(A)(2) (Rev. 1, Feb. 2000).